

2001-2002 Chapter 40B Regulatory Changes

Presented to the Chapter 40B Task Force

Anne Marie Gaertner

March 31, 2003

Notice

Change

Developers and subsidizing agents are required to share more information with stakeholders, and provide opportunity for feedback.

Rationale

Information sharing early in the development process facilitates a fair and open negotiating process whereby the needs of the developer and the community can be met.

Notice

Change

ZBAs must provide notice to DHCD when a comprehensive permit becomes final.

Rationale

Allows DHCD to monitor comprehensive permit activity and increase effectiveness in its role as a regulator.

Notice

Change

DHCD must update the SHI every 2 years.

**Note: DHCD will update a community's SHI attainment at the community's request.*

Rationale

Publishing the SHI regularly allows access to information which can inform local development decisions.

Counting Units

Change

Units are counted on the SHI when a comprehensive permit becomes final.

Rationale

Units are credited to a community at an earlier stage in the development process, allowing the community to demonstrate progress earlier.

Counting Units

Change

Accessory apartments may be included on the SHI.

Rationale

The SHI should fairly reflect a community's housing stock which meets the needs of its low- and moderate-income households over the long term.

Counting Units

Change

Community housing developed with Community Preservation Act funds are included on the SHI.

Rationale

The SHI should fairly reflect a community's housing stock which meets the needs of its low- and moderate-income households over the long term.

Counting Units

Change

Locally subsidized units which qualify for the Local Initiative Program are included on the SHI.

Rationale

The SHI should fairly reflect a community's housing stock which meets the needs of its low- and moderate-income households over the long term.

Counting Units

Change

Group home (DMR/DMH) units are included on the SHI.

Rationale

Group homes typically serve low- and moderate income disabled individuals and should be counted toward a community's affordable housing goals.

“Recent Progress”

Change

A ZBA may deny comprehensive permits for 1 year if the community has made “recent progress” toward housing goals.

Rationale

Allows a community to adjust to changing infrastructure needs which attend housing growth.

Large Scale Projects

Change

A ZBA may deny a comprehensive permit if the proposal is too “large scale” for the community.

Rationale

Housing development should reflect the needs, scale, and character of the community.

“Cooling Off Period”

Change

A ZBA may deny a comprehensive permit if a proposal to develop the same land within the past year did not include affordable housing.

Rationale

Chapter 40B should not be used as a “threat” by a developer to achieve non-affordable housing development goals.

Planning

Change

The HAC may receive evidence of a community's plan and its implementation in its proceedings.

Rationale

If a community is engaged in planning and implementing its plan for affordable housing, its plan should not be thwarted by a proposal which is inconsistent with the plan.

“Planned Production”

Change

Communities can create and implement affordable housing plans over the long term, and can deny comprehensive permits if they so choose.

Rationale

Communities should be able to determine how and where they should grow to meet the needs of their residents.

New England Fund

Change

NEF developments will be approved and monitored by a DHCD authorized Project Administrator.

Rationale

It was essential that the valuable resource of the NEF be preserved, but also to ensure that NEF projects adhere to traditional standards of affordable housing programs in the Commonwealth.

Examples of Proposals that have not been adopted

- Count 100% of ownership units as well as 100% of rental units on SHI
 - ◆ Rationale: The current advantage of counting all market-rate rental units provides an incentive to produce rental housing, which is extremely limited and difficult to permit throughout the Commonwealth.

Examples of Proposals that have not been adopted

- Count Section 8 vouchers on the SHI
 - ◆ Rationale: Section 8 vouchers are income subsidies that are applied toward rent, and as such, are not housing units. To count such subsidies toward communities' housing goals would contravene the statutory intent of Chapter 40B. Furthermore, vouchers obtained in Massachusetts are not required to be used in Massachusetts, and can be used to rent an apartment anywhere in the United States.

Examples of Proposals that have not been adopted

- Limit the number of Comprehensive Permit proposals a ZBA must review over a given time period
 - ◆ Rationale: While it may be appropriate to impose such a limitation in the future, DHCD has not yet done so pending implementation (and review of results) of already extensive new regulations impacting comprehensive permits.